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MAY 8

CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 63

THE HODGE DRIVE-IT-YOURSELF COMPANY, ET AL.,

Appellants,

vs.

THE CITY OF CINCINNATI, ET AL.,

Appellees.

STATEMENT OF JURISDICTION.

JULIUS R. SAMUELS,
Counsel for Appellants.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 926.

THE HODGE DRIVE-IT-YOURSELF COMPANY, ET AL.,

Appellants,

vs.

THE CITY OF CINCINNATI, ET AL.,

Appellees.

STATEMENT OF JURISDICTION.

Come now the appellants in the above entitled cause and respectfully represent that this court has jurisdiction to review on appeal the judgment of the Supreme Court of the state of Ohio in this cause.

I.

STATEMENT OF CASE.

This action originated in the Court of Common Pleas, Hamilton county, Ohio, in which the parties stood in the same relation as they are in this court, the appellants being plaintiffs, and the appellees being defendants.

The appellants are all engaged in the business of renting or leasing automobiles to be driven by the renter

(said business being commonly known as the "driverless or drive-it-yourself automobile business") under contracts entered into between them and the persons renting or leasing their automobiles.

They brought their action against the city of Cincinnati, and the various officials thereof including the city manager, the mayor, the director of public utilities, the treasurer, and the chief of the police department of said city, to restrain the city and said officials from enforcing a certain ordinance of the city of Cincinnati, known as Ordinance No. 50-1929, passed on February 6, 1929 (effective March 6, 1929), on the ground that said ordinance and the pertinent sections thereof were invalid, unconstitutional and void, in that they violated Section 1 of Article 14 of the amendments to the Constitution of the United States, and various provisions of the Constitution of the state of Ohio, claiming that by the operation of said ordinance there is a taking of their property without due process of law, there is a denial to them of the equal protection of the laws and an interference with their inalienable right to acquire, possess and protect their property.

The principal provisions of the ordinance complained of were the following:

1. Designating the "driverless automobile for hire" (the automobile leased by appellants to their customers) as a public vehicle. (Secs. 65-1b; 65-1e.)

2. The requirement of an application for vehicle license and the payment of a certain license fees varying with the type of vehicle. (Secs. 65-3; 65-5.)

3. The requirement of persons engaged in the driverless automobile business of liability insurance policies or bonds in lieu thereof, to protect persons who might be injured or whose property might be damaged as the result of the negligence in the operation, maintenance or use of said automobile by the renter. (Secs. 65-7; 65-8; 65-9; 65-10; 65-11.)

4. The requirement of a metal tag on the automobile leased to renters designating the type of vehicle and other information. (Sec. 65-13.)

5. The powers vested in the director of public utilities to adopt rules and regulations. (Sec. 65-42.)

6. The drastic penalties prescribed for the violation of the said ordinance. (Secs. 65-45; 65-47.)

7. The limited appeal to the city manager without provision for appeal to a court. (Sec. 65-48.)

The case was tried to the court and was submitted on the evidence. The trial court found in favor of appellants and held said ordinance and the principal provisions thereof to be unconstitutional and in violation of the federal and state constitutions.

The case was appealed to the Court of Appeals (an intermediate reviewing court), where the case was again tried de novo and submitted to the court on the evidence, which was subsequently incorporated in a bill of exceptions, and the said court found in favor of appellees, holding that said ordinance was valid and constitutional.

The case was then taken on error to the Supreme Court of the state of Ohio (the court of last resort), which court affirmed the decision of the Court of Appeals and held said ordinance to be valid and constitutional and not repugnant to the Constitution of the United States.

II.

JURISDICTIONAL FACTS.

Original Record

The petition filed in the Common Pleas Court raised the question of the constitutionality of the ordinance involved in this action, appellants claiming the ordinance to be violative of the Fourteenth Amendment to the Constitution of the United States..... 52–67

The answer of appellees in the Common Pleas Court put the constitutionality of the ordinance in issue 68–71

The decree of the Common Pleas Court finding in favor of appellants and holding said ordinance to be unconstitutional..... 51–52

The decree of the Court of Appeals finding in favor of appellees and holding said ordinance to be constitutional 73

Petition in error filed in the Supreme Court of the state of Ohio preserving the constitutional question 46–48

Printed record in the Supreme Court of the state of Ohio including bill of exceptions containing all of the evidence in the case.....42–158

Judgment entry of the Supreme Court of the state of Ohio affirming the decree of the Court of Appeals 18

Opinion of the Supreme Court of the state of Ohio, holding said ordinance to be valid and not repugnant to the Constitution of the United States, with certificate of reporter..... 26–39

Application for rehearing filed in the Supreme Court of the state of Ohio 22–25
Judgment entry of Supreme Court of the state of Ohio denying application for rehearing 18
Petition for allowance of appeal, including assignment of errors and prayer for reversal 2–4
Order allowing appeal and fixing bond 6
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Citation with acknowledgment of receipt, and entry of appearance of appellees 8–9
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Certificate of clerk of the Supreme Court of the state of Ohio as to original papers 41
Certificate of lodgment by the clerk of the Supreme Court of Ohio 40

III.

JURISDICTIONAL DATES.

	Original Record
The judgment of the Supreme Court of the state of Ohio was rendered and entered on February 11, 1931	18
The entry of the Supreme Court of the state of Ohio denying the application for rehearing was entered on March 12, 1931	18
The petition for allowance of appeal, including assignment of errors and prayer for reversal was filed on March 26, 1931	2–4

The order allowing appeal and fixing bond, signed by the chief justice of the Supreme Court of the state of Ohio was entered on March 26, 1931 6

Summons and servance, with proof of service thereon, was filed on March 26, 1931..... 11

Citation issued by the Chief Justice of the Supreme Court of the state of Ohio on March 26, 1931.. 8

The application for appeal was therefore allowed within three months after the entry of the decree of the Supreme Court of the state of Ohio, as provided for by Section 350, United States Code Annotated, Title 28.

IV.

AUTHORITIES.

United States Judicial Code, Section 237 amended; United States Code Annotated, Title 28, Section 344 (a):

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity; or where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such state court and may, in its discretion,

award execution or remand the cause to the court from which it was removed by the writ."

United States Code Annotated, Title 28, Section 861 (a):

"The writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtained by appeal."

In the case of Zucht v. King, 260 U. S., 174, it was held:

"A city ordinance is a law of the state, within the meaning of Par. 237 of the judicial code, as amended, which provides a review in the Supreme Court of the United States by writ of error, where the validity of the law is sustained, by the highest court of the state in which a decision in the suit could be had."

See also, Atlantic Coast Line Railway Company v. Goldsboro, 232 U. S., 548, and the cases cited at page 555 of the opinion of the court to the effect that a municipal ordinance is a statute under the judicial code.

In the case of King Manufacturing Company v. City Council of Augusta, 277 U. S., 100 (decided May 14, 1928), it was held:

"A municipal ordinance fixing rates for water power, which is sustained by the state courts against the objection that it violates provisions of the Federal Constitution, is within the operation of the act of Feb. 13, 1925, Chap. 229, U. S. C., Title 28, Par. 344, giving the Supreme Court of the United States jurisdiction to review by writ of error judgments of the state courts of last resort where is drawn in question the validity of a state statute on the ground of

it being repugnant to the Constitution or laws of the United States, and the decision is in favor of its validity."

See also,

Sprout v. City of South Bend, 277 U. S., 163;
Public Service, Inc. v. City of New Orleans, 281 U. S., 682; 684.

This cause is therefore one within the purview of the second clause of Section 237 of the judicial code as amended, since it draws into question the validity of a statute of the state of Ohio (Ordinance No. 50-1929 of the city of Cincinnati) which it is claimed is repugnant to the Constitution of the United States, the decision of the Supreme Court of the state of Ohio being in favor of its validity.

It is therefore respectfully submitted that upon the foregoing authorities, the jurisdiction of this court may be asserted in this case.

Respectfully submitted,

JULIUS R. SAMUELS,

Counsel for Appellants.